**IN THE HIGH COURT OF BOMBAY AT GOA**

**TAX APPEAL NO. 4 OF 2002.**

The Commissioner of Income Tax,
having office at Aayakar Bhavan Patto,
Plaza, Panaji, Goa. ..... Appellant.

Versus

1. M/s. Supreme Graphics Creations Pvt. Ltd.
Alankar Building, Malbhat,
Margao, Goa.

2. The Income Tax Appellate Tribunal,
Panaji Bench, Aayakar Bhavan,
Patto Plaza, Panaji, Goa. ..... Respondents.

Shri S.R. Rivonkar, Advocate for the Appellant.

Shri M.S. Usgaonkar, Senior Advocate with Shri Sudin Usgaonkar, Advocate for the Respondent No.1.

**CORAM: B. H. MARLAPALLE &**
**N. A. BRITTO, JJ.**

**DATE: 6th December, 2004.**

**ORAL JUDGMENT: ( PER MARLAPALLE, J.)**

This appeal arises from the Order dated 28.9.2001 passed by the Income Tax Appellate Tribunal, Panaji by allowing an appeal against the Order passed by the Assistant Commissioner of Income Tax as an Assessing Officer. The question of law as raised in this appeal is :- ' Whether the operations carried out by the assessee namely of lamination, punching and pasting with glue for the purpose of making cartons is a manufacturing process as contemplated under Section 8IB of the Income Tax Act 1961.

2. Search of the business premises of the assessee was carried out under Section 132 of the Act on 16.10.1996 and the search proceedings was completed on 13.12.96. The notice under Section 158BC of the Act was served on the assessee on 11.1.1997 for the block assessment period 1987-88 to 1997-98. The assessing officer passed the assessment order under Section 158BC(c) of the Act on 17.12.1997 and held that the total undisclosed income was Rs.26,25,020 and therefore tax thereon was quantified at Rs.15,75,012. This order was challenged before the I.T.A.T., Panaji in appeal under Section 253 of the Act and the appeal filed by the assessee has been allowed in terms of the impugned order.

3. The Assessing Officer noted that the following operations as part of the process of making cartons were carried out in the premises of the assessee:- (a) The printed sheets are brought to the factory of the assessee company and laminated to make the surface of the sheets smooth and attractive; (b) The laminated sheets are punched which makes the laminated paper converted into cartons; and © The punched paper is pasted with glue to convert into a carton.

4. However, the assessing officer noted that the following two operations were not carried out in the premises of the assessee, namely (a) raw material paper was purchased from M/s. ITC Bhadrachalam Paper Boards Ltd.; and (b) the said paper is printed at the factory of the sister concern of the assessee company M/s. Neographics India.

5. Under these circumstances, the assessing officer held that the assessee was not engaged in any manufacturing operations so as to claim the deduction. His reasoning was summarised in the following words :-

" 'Manufacture' employs a change but every change is not manufacture and yet every change of an article is a result of treatment, labour and manipulation. But something more is necessary and there must be transformation of a new and different article must emerge having a distinct name, character or use. Thus the activities undertaken by the assessee company with the use of machinery does produce some change in the paper used as a raw material but does not bring into existence a new substance which is required to call the process of lamination and punching as manufacture.. "

6. In appeal the Tribunal did not agree with the reasoning given by the assessing officer and while setting aside the said reasoning, the Tribunal by referring to the decisions of the Supreme Court in the case of **Empire Industries Ltd. And others v. Union of India and others (A.I.R. 1986 S.C. 662), Laminated Packings (P) Ltd. Collector of Central Excise, Guntur [(1990) 4 S.C.C. 51] and Union of India and another v. Babubhai Nylchand Mehta (A.I.R. 1991 S.C., 407)** held that the assessee's manufacturing of printed, laminated and waxed carton**s** was very similar to the activities carried out and covered in the above decisions. It also noted that no concealed income was found during the search operations.

7. In para 5 of the impugned order, the Tribunal noted thus:-

' The raw material used for manufacture of printed laminated carton is a paperboard corrugative sheets, which have different uses. The final product is printed product is printed paperboard container, plain and varnished laminated, foil embossed and waxed cartons, printed E-flute corrugated board cartons & printed catch covers. The characteristics of the finished goods are totally changed after laminating, corrugating, printing, punching and pasting. The finished product cannot be called paperboard or paper carton by look or by characteristics. It is a commodity & article called as 'cartons'. The use of finished product is specific. The raw material cannot be used in place of finished product and the finished product cannot be used in place of raw material. '

8. We have no doubt in our mind that the Tribunal has considered the nature of operations carried out by the assessee and by relying upon the three decisions of the Supreme Court (supra), reached to a conclusion that the assessee was carrying out a manufacturing process for making the laminated cartons. The reasoning given by the Tribunal cannot be faulted with, as it does not suffer from any errors. The Tribunal has rightly discarded the view taken by the assessing officer.

9. In the result, this appeal fails and the same is hereby dismissed.

**B. H. MARLAPALLE, J.**

**sl.** **N. A. BRITTO, J.**